

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
)
BILLY DARRYL FLOYD,)
)
 Defendant.)

)

TRANSCRIPT OF INITIAL APPEARANCE
BEFORE THE HONORABLE DAVID S. CAYER
UNITED STATES MAGISTRATE JUDGE
SEPTEMBER 6, 2016

APPEARANCES:

On Behalf of the Government:

GREGORY P. BAILEY, ESQ.
U.S. Department of Justice - Tax Division
601 D Street, N.W., Suite 7919
Washington, DC 20004

On Behalf of the Defendant:

CALEB NEWMAN, ESQ.
Federal Public Defender's Office
129 West Trade Street, Suite 300
Charlotte, North Carolina 28202

Digitally recorded proceedings transcribed by:

Cheryl A. Nuccio, RMR-CRR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

(Transcript of proceedings digitally recorded on
September 6, 2016.)

THE COURT: United States versus Billy Floyd.

MR. NEWMAN: Good afternoon, Your Honor.

THE COURT: Mr. Newman.

Mr. Bailey.

MR. BAILEY: Yes, Your Honor. Good afternoon. Greg
Bailey for the United States.

THE COURT: Sir, this is your first appearance in
United States District Court in this matter. The attorney
standing in with you is Mr. Newman with the Federal Defender's
Office. He is here to assist you during the hearing today.

You do have a right to remain silent and anything
you say may be used against you.

May this indictment be unsealed at this point?

MR. BAILEY: Yes, Your Honor. The government will
move to unseal.

THE COURT: All right. I'll grant the motion.

Sir, you are charged in this indictment with a total
of six charges. I will summarize the charges and ask the
government to state the penalties if you're convicted on these
charges.

The first charge is attempting to interfere with the
administration of the internal revenue laws, and this is

1 charged from October of 2007 through September of 2011 in the
2 Western District of North Carolina and elsewhere. And what it
3 charges is that you attempted to obstruct and impede the
4 administration of the internal revenue laws, the tax laws, by
5 filing false documents and tax returns and by attempting to
6 permit the sale of property that had been seized by the IRS
7 and by attempting to intimidate employees of the IRS.

8 Do you understand what I'm saying about that charge,
9 sir?

10 THE DEFENDANT: I see it, but this is my first
11 time --

12 THE COURT: All right, sir.

13 THE DEFENDANT: -- looking at it so I'm just --

14 THE COURT: All right.

15 THE DEFENDANT: -- consuming it.

16 THE COURT: All right. And that's -- the purpose of
17 this hearing is to give you a copy of the indictment and
18 inform you of the charge and then the penalty if you're
19 convicted.

20 And the penalty on that charge is?

21 MR. BAILEY: The penalty is a maximum of three
22 years' imprisonment, one year supervised release, \$5,000 fine,
23 and a \$100 special assessment.

24 THE COURT: Then the remaining charges charge filing
25 false tax returns.

1 Count two charges that on October 22nd, 2010, within
2 this district, that you filed a false IRS Form 1040X for the
3 year 1999.

4 Count three charges that on or about October 22nd,
5 2010, in this district, that you filed a false Amended U.S.
6 Individual Tax Return Form 1040X for tax year 2000.

7 Count four charges that on October 22nd, 2010, in
8 this district, that you made and subscribed an Amended U.S.
9 Individual Tax Return Form 1040X for the tax year 2001 that
10 was false.

11 Count five charges that on that same date,
12 October 22nd, 2010, within this district, that you falsely
13 made and subscribed a U.S. Individual Tax Return Form 1040X
14 for the year 2002 that was a false return.

15 And finally, the last count, count six, charges on
16 that same date that you filed a false IRS Form 1040X for the
17 tax year 2003.

18 So those remaining charges, two through six, charge
19 filing false tax returns. Do you understand that, sir?

20 THE DEFENDANT: I understand what you're saying, but
21 as far as --

22 THE COURT: That's all I'm asking.

23 THE DEFENDANT: As far as I can -- you know, all I
24 can do is look at it and say yes, sir.

25 THE COURT: Well, as I say, I'm just wanting -- I'm

1 just wanting to go over --

2 THE DEFENDANT: Sure.

3 THE COURT: -- what's in this indictment with you.

4 THE DEFENDANT: Sure.

5 THE COURT: So you understand what you're charged
6 with.

7 THE DEFENDANT: Right.

8 THE COURT: And what the penalties are. This is
9 just the first step of the process.

10 THE DEFENDANT: Sure, and I thank you for your
11 courtesy.

12 THE COURT: And the penalty on each of those is?

13 MR. BAILEY: Yes, Your Honor, for each count will be
14 three years' imprisonment, one year supervised release, a
15 \$100,000 fine, and a \$100 special assessment.

16 So those are the charges, sir, and the penalties.
17 Do you understand those as they have been stated?

18 THE DEFENDANT: If what he's saying is correct, yes,
19 sir.

20 THE COURT: You have a right to be represented by an
21 attorney here and if you can't afford one, I'll consider
22 appointing counsel for you.

23 Do you own or rent the place where you live, sir?

24 THE DEFENDANT: More or less rent.

25 THE COURT: How much rent do you pay?

1 THE DEFENDANT: Basically they let me stay there.
2 More or less they let me stay there.

3 THE COURT: So you're not paying any rent.

4 THE DEFENDANT: No, not really.

5 THE COURT: All right.

6 THE DEFENDANT: They just let me stay there.

7 THE COURT: Well, I'll appoint counsel, sir, and the
8 federal defender will assign an attorney to your case.

9 THE DEFENDANT: Thank you, sir.

10 THE COURT: What's the government's position on his
11 bond?

12 MR. BAILEY: We're not going to seek detention, Your
13 Honor. The standard 25,000 unsecured is fine with the
14 government.

15 THE COURT: All right. Do you want to say anything
16 about him, Mr. Newman?

17 MR. NEWMAN: No, sir, Your Honor. I know very
18 little, to be completely honest with the Court. But
19 Mr. Floyd -- I had a very short time to discuss the charges
20 with him. In fact, I didn't even have a copy of the
21 indictment when I was speaking with Mr. Floyd earlier. But
22 Mr. Floyd tells me that he has a number of commitments that he
23 needed to make and was hopeful that the government would not
24 move for detention and we are thankful for the government's
25 concession on that point.

1 THE COURT: What is the address of the place where
2 you're living, sir?

3 THE DEFENDANT: 2601 Spring Drive.

4 THE COURT: And where is that?

5 THE DEFENDANT: It's in Union County.

6 THE COURT: What is the address? Monroe or what's
7 the address?

8 THE DEFENDANT: Yeah, I'm sorry. I apologize. Yes,
9 Monroe.

10 THE COURT: And when you say someone is letting you
11 live there, who is it that is letting you live there?

12 THE DEFENDANT: I just live there, you know.
13 Trustees own the house. I don't -- I don't own the house.

14 THE COURT: How long have you lived there?

15 THE DEFENDANT: Approximately six years, somewhere
16 in that area. I pay the bills. You know, what little money I
17 make, I pay the bills.

18 THE COURT: All right.

19 THE DEFENDANT: Keep it up.

20 THE COURT: The reason why I'm asking those
21 questions is probation -- the pretrial officer is going to
22 have to know where you are, so...

23 THE DEFENDANT: Truthfully, I have no where else but
24 that. He can have my phone number. He's welcome to call me.

25 THE COURT: All right. Well, these will be the

1 conditions of release, then.

2 Unsecured bond in the amount of 25,000.

3 Those conditions will include that you not violate
4 any local, state or federal laws.

5 That you report to the probation officer whenever
6 they order you to report.

7 You may not use or possess any weapons or illegal
8 drugs.

9 The probation officer has the authority to search
10 your person, your premises or your computer, also to drug test
11 you.

12 Your travel is restricted to the Western District of
13 North Carolina.

14 THE DEFENDANT: Sir. Sir --

15 THE COURT: Let me finish.

16 THE DEFENDANT: Okay.

17 THE COURT: Your travel is restricted to the Western
18 District of North Carolina. Any other travel would require
19 permission of the probation officer.

20 Do you have a passport?

21 THE DEFENDANT: No. Well, yeah, I guess I do, but
22 I'm not planning on going nowhere.

23 THE COURT: All right. Well, you're ordered to
24 surrender the passport to probation forthwith.

25 THE DEFENDANT: Yeah.

1 THE COURT: Now, what was your question about the
2 travel?

3 THE DEFENDANT: I travel toward the eastern part of
4 North Carolina, Lumberton area. My parents' dwelling was
5 there -- is there and they passed away and we're working on
6 selling -- getting rid of all my parents' stuff. So that
7 would be the only direction that I would be going would be in
8 the eastern part of North Carolina.

9 THE COURT: Well, if you need to travel down there,
10 you need to notify the probation officer.

11 THE DEFENDANT: Sure.

12 THE COURT: And I'm sure --

13 THE DEFENDANT: Who is he?

14 THE COURT: Well, this gentleman is going to talk to
15 you today. I'm not sure who your pretrial officer ultimately
16 will be.

17 THE DEFENDANT: Sure.

18 THE COURT: But you just need to --

19 THE DEFENDANT: Just let him know --

20 THE COURT: -- make them aware of that and ask their
21 permission to make those travels.

22 THE DEFENDANT: Sure. No worries with that, sir.

23 THE COURT: Are there any other conditions the
24 government is concerned about as far as conditions of release?

25 MR. BAILEY: No, Your Honor.

1 THE COURT: All right. So, sir, those are going to
2 appear on the screen there and you'll be signing the bond
3 first of all and then second the conditions of release.

4 THE DEFENDANT: Sure.

5 (Pause.)

6 THE COURT: Your attorney will be in touch with you,
7 sir.

8 THE DEFENDANT: Sure.

9 THE COURT: And then once counsel has been
10 appointed, your next court date will be an arraignment.
11 That's where you formally enter a plea.

12 THE DEFENDANT: Has he got a phone number to contact
13 me or...

14 THE COURT: Mr. Newman is with the Federal
15 Defender's Office. He can explain that to you, sir.

16 THE DEFENDANT: Sure.

17 THE COURT: But yes, they should.

18 THE DEFENDANT: Thank you for your courtesy and your
19 time.

20 THE COURT: Marshal, you may recess court.

21 (End of proceedings.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Cheryl A. Nuccio, Federal Official Realtime Court
7 Reporter, in and for the United States District Court for the
8 Western District of North Carolina, do hereby certify that
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16 Dated this 1st day of June 2017.

17
18 s/Cheryl A. Nuccio

19 Cheryl A. Nuccio, RMR-CRR
20 Official Court Reporter
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